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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Walter Dolan;

Plaintiff,

vs.

World Wide Stone Corporation, Inc., a
Nevada corporation; Frank Cunningham
and Jane Doe Cunningham, husband and
wife; John Heck and Jane Doe Heck,
husband and wife; Joel Allred and Jane
Doe Allred, husband and wife

Case No.: _____

COMPLAINT

Plaintiff Walter Dolan, for his Complaint against Defendants, alleges as follows:

NATURE OF THE CASE

1. The Fair Labor Standards Act is designed to eliminate “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency and general well-being of workers.” 29 U.S.C. § 202(a). To achieve its goals, the FLSA sets minimum wage and overtime pay requirements for covered employers. *See* 29 U.S.C. §§ 206(a), 207(a).

1 2. Employers must compensate employees for all work that employers permit
2 employees to perform. *See* 29 C.F.R. § 785.11. In such cases, it is the responsibility of
3 employers' management to ensure that work is not performed if management does not
4 desire for such work to be performed. *See* 29 C.F.R. § 785.13. Employers may not accept
5 the benefits of employees performing work without compensating the employees for their
6 work. *Id.*

7 3. Plaintiff brings this action against Defendants for unlawful failure to pay
8 overtime wages in direct violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et*
9 *seq.* ("FLSA").
10

11 4. Defendants had a consistent policy and practice of requiring its employees to
12 work well in excess of forty (40) hours per week without paying them time and a half for
13 hours worked over forty (40) hours per week.

14 5. Plaintiff seeks to recover unpaid overtime compensation and an equal amount
15 of liquidated damages, including interest thereon, statutory penalties, attorneys' fees, and
16 costs pursuant to 29 U.S.C. § 216(b).
17

18 **JURISDICTION AND VENUE**

19 6. This Court has jurisdiction over the subject matter and the parties hereto
20 pursuant to 29 U.S.C. § 216(b), and 28 U.S.C. § 1331.

21 7. Venue is proper under 28 U.S.C. § 1391(b) because Defendants reside within
22 the State in which this District Court is located and because a substantial part of the
23 events or omissions giving rise to this matter occurred in this District.
24
25

1 15. Upon information and belief, at all times material hereto, Defendant Joel
2 Allred, was and continues to be a resident of Maricopa County, Arizona.

3 16. Jane Doe Allred is Joel Allred's wife. Joel and Jane Doe Allred have
4 caused events to take place giving rise to this Complaint as to which their marital
5 community is fully liable.

6 17. Upon information and belief, and consistent with the information available
7 from the Arizona Corporation Commission, Defendants Frank Cunningham, John Heck,
8 and Joel Allred were and are the owners of World Wide Stone Corporation, Inc.

9 18. At all relevant times, Plaintiff was an "employee" of Defendants, as defined
10 by 29 U.S.C. § 203(e)(1).
11

12 19. The provisions set forth in 29 U.S.C. § 207 of the FLSA apply to Defendants.

13 20. At all relevant times, each of the Defendants was and continues to be an
14 "employer" as defined in 29 U.S.C. § 203(d).

15 21. Each of the Defendants should be deemed an "employer" for purposes of the
16 FLSA including, without limitation, 29 U.S.C. § 216.

17 22. Defendant Frank Cunningham is deemed an "employer" for purposes of the
18 FLSA, including, without limitation, 29 U.S.C. §216.
19

20 23. Defendant John Heck is deemed an "employer" for purposes of the FLSA,
21 including, without limitation, 29 U.S.C. §216.

22 24. Defendant Joel Allred is deemed an "employer" for purposes of the FLSA,
23 including, without limitation, 29 U.S.C. §216.

24 25. All Defendants are co-equally liable for all matters.
25

1 26. Defendant Frank Cunningham made all decisions on the daily activities of his
2 employees and is therefore individually liable under the FLSA.

3 27. Defendant Frank Cunningham makes all decisions regarding pay policies for
4 World Wide Stone Corporation, Inc.

5 28. Defendant John Heck made all decisions on the daily activities of his
6 employees.

7 29. Defendant John Heck makes all decisions regarding pay policies for World
8 Wide Stone Corporation, Inc.

9 30. Defendant Joel Allred made all decisions on the daily activities of his
10 employees.

11 31. Defendant Joel Allred makes all decisions regarding pay policies for World
12 Wide Stone Corporation, Inc.

13 32. Defendant Frank Cunningham exerted financial control over World Wide
14 Stone Corporation, Inc.

15 33. Defendant Frank Cunningham exerted operative control over World Wide
16 Stone Corporation, Inc.

17 34. Defendant John Heck exerted financial control over World Wide Stone
18 Corporation, Inc.

19 35. Defendant John Heck exerted operative control over World Wide Stone
20 Corporation, Inc.

21 36. Defendant Joel Allred exerted operative control over World Wide Stone
22 Corporation, Inc.

23 36. Defendant Joel Allred exerted operative control over World Wide Stone
24 Corporation, Inc.
25

1 37. Defendant Joel Allred exerted financial control over World Wide Stone
2 Corporation, Inc.

3 38. Defendant Frank Cunningham has the power to close World Wide Stone
4 Corporation, Inc.

5 39. Defendant John Heck has the power to close World Wide Stone Corporation,
6 Inc.

7 40. Defendant Joel Allred has the power to close World Wide Stone Corporation,
8 Inc.

9 41. Defendant Frank Cunningham has the power to hire and fire employees.

10 42. Defendant John Heck has the power to hire and fire employees.

11 43. Defendant Joel Allred has the power to hire and fire employees.

12 44. Defendant Frank Cunningham hired managerial employees.

13 45. Defendant John Heck hired managerial employees.

14 46. Defendant Joel Allred hired managerial employees.

15 47. On information and belief, Defendant Frank Cunningham maintained
16 employment records.

17 48. On information and belief, Defendant John Heck maintained employment
18 records.

19 49. On information and belief, Defendant Joel Allred maintained employment
20 records.

21 50. On information and belief, Defendant Frank Cunningham dictated the
22 corporate message in pending labor investigations.

1 51. On information and belief, Defendant John Heck dictated the corporate
2 message in pending labor investigations.

3 52. On information and belief, Defendant Joel Allred dictated the corporate
4 message in pending labor investigations.

5 53. Defendant Frank Cunningham profited from the FLSA violations detailed in
6 this complaint.

7 54. Defendant John Heck profited from the FLSA violations detailed in this
8 complaint.

9 55. Defendant Joel Allred profited from the FLSA violations detailed in this
10 complaint.

11 56. At all times material to this action, each of the Defendants was and continues
12 to be an “enterprise engaged in commerce or in the production of goods for commerce”
13 as defined by 29 U.S.C. § 203(s)(1).
14

15 57. As a regional account representative, Plaintiff traveled outside the state of
16 Arizona to meet with clientele and attend trade shows.

17 58. As a regional account representative, Plaintiff sold products to out of state
18 customers.

19 59. Plaintiff engaged in commerce or in the production of goods for commerce
20 and is therefore individually covered under the FLSA pursuant to 29 U.S.C. §§206(a),
21 207(a)(1), 212(c).
22

23 60. Plaintiff was involved in transacting business across state lines via interstate
24 telephone calls or the U. S. Mail which included taking new orders from customers.
25

1 71. World Wide Stone Corporation, Inc. compensated Plaintiff at an hourly rate
2 of \$19.23 per hour.

3 72. Defendants withheld taxes out of Plaintiff's paycheck pursuant to IRS
4 regulations.

5 73. Plaintiff's regular schedule was five days per week.

6 74. Defendants told Plaintiff that his main task was to grow company sales from
7 the prior term.

8 75. Plaintiff informed Defendants that in order to do so he would have to work
9 more than 40 hours each week.

10 76. Defendants gave Plaintiff a key to the office and instructed him that he was
11 allowed to work as many hours as he needed to complete the tasks but was not allowed to
12 claim any hours over forty in a week.

13 77. Therefore, Plaintiff would only be paid for forty hours each work week.

14 78. Plaintiff would have to arrive at 8:00 am every day he was on the schedule,
15 but Plaintiff arrived at 7:45 every day, and was not able to leave work until at least 8:00
16 p.m. each day that he was on the schedule.

17 79. Plaintiff worked these long hours at Defendants' office in Phoenix, Arizona,
18 Defendant Cunningham, Robert Livingston, and David Gerth personally witnessed
19 Plaintiff work such hours as they were usually in the office late into the night as well.

20 80. Each and every week that Plaintiff has worked his regular schedule, he has
21 worked over forty hours in a week.

22 81. Plaintiff was a non-exempt employee.

1 82. Plaintiff had no supervision or management responsibilities.

2 83. Plaintiff could neither hire nor fire employees.

3 84. Plaintiff had no authority to exercise significant independent judgment on
4 issues that affect the whole company when carrying out his job responsibilities.

5 85. Defendants managed, supervised, and directed all aspects of Plaintiff's job
6 duties and responsibilities.

7 86. Plaintiff's primary duty was not the performance of work directly related to
8 the management or general business operations of World Wide Stone Corporation, Inc. or
9 its' customers.

10 87. Plaintiff's primary duty was not the performance of work requiring advanced
11 knowledge in a field of science or learning that was acquired by a prolonged course of
12 specialized intellectual instruction.

13 88. Plaintiff did not perform work requiring advanced knowledge.

14 89. Plaintiff did not perform work in a field of science or learning.

15 90. Plaintiff did not have an advanced degree and was not required to have one to
16 perform the work.

17 91. The knowledge required to perform the work of regional account
18 representative is not acquired by a prolonged course of specialized intellectual study.

19 92. Plaintiff's work did not require consistent exercise of discretion and
20 judgment.

21 93. Plaintiff's work did not require him to analyze, interpret, or make deductions
22 from varying facts or circumstances.

1 105. On information and belief, Defendants further engaged in a widespread
2 pattern and practice of violating the provisions of the FLSA by failing to pay Plaintiff in
3 accordance with 29 U.S.C. § 207.

4 106. As the direct and proximate result of Defendants' violations of the FLSA,
5 Plaintiff has suffered damages by failing to receive compensation in accordance with 29
6 U.S.C. § 207.

7 107. Pursuant to 29 U.S.C. § 216, Defendants are liable to Plaintiff for an amount
8 equal to one and one-half times his regular pay rate for each hour of overtime worked per
9 week.
10

11 108. In addition to the amount of unpaid wages owed to Plaintiff, he is also
12 entitled to recover an additional equal amount as liquidated damages pursuant to 29
13 U.S.C. § 216(b).

14 109. On information and belief, Defendants' conduct in failing to properly
15 compensate Plaintiff, in violation of the FLSA, was willful.

16 110. Defendants have not made a good faith effort to comply with the FLSA.
17 Plaintiff has been required to bring this action to recover his overtime compensation, and
18 his statutory liquidated damages, and as the direct and foreseeable result of Defendants'
19 conduct, Plaintiff has incurred costs and attorneys' fees.
20

21 WHEREFORE, Plaintiff respectfully requests that judgment be entered in his
22 favor against Defendants:

- 23 a. Awarding Plaintiff overtime compensation in the amount due for all of
24 his time worked in excess of forty (40) hours per week at a pay rate
25

1 equal to one and one-half times Plaintiff's regular rate of pay while at
2 work for Defendants, in an amount proved at trial;

3 b. Awarding Plaintiff liquidated damages in an amount equal to the
4 overtime award;

5 c. Awarding Plaintiff reasonable attorneys' fees, costs, and expenses of the
6 litigation pursuant to 29 U.S.C. § 216(b);

7 d. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all
8 amounts awarded under subsections (a) and (b) above from the date of
9 the payment due for that pay period until paid in full;

10 e. Awarding Plaintiff post-judgment interest, at the highest legal rate, on
11 all awards from the date of such award until paid in full; and

12 f. For such other and further relief as the Court deems just and proper.
13

14 **COUNT TWO**
15 **DECLARATORY JUDGMENT**

16 111. Plaintiff incorporates and adopts paragraphs 1 through 110 above as if fully
17 set forth herein.

18 112. Plaintiff and Defendants have an overtime compensation dispute pending.

19 113. The Court has jurisdiction to hear Plaintiff's request for declaratory relief
20 pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201–02.

21 114. Plaintiff is entitled to declarations, and requests that the Court make
22 declarations as to the following matters and as to other matters deemed appropriate by the
23 Court:
24
25

- a. Defendants employed Plaintiff.
- b. Defendants are engaged in an enterprise covered by the overtime provisions of the FLSA.
- c. Plaintiff individually is covered by the overtime provisions of the FLSA.
- d. Plaintiff was not an exempt employee pursuant to the FLSA.
- e. Defendants failed and refused to make payments of overtime compensation to Plaintiff, in violation of the provisions of the FLSA.
- f. Defendants' failures to pay overtime compensation to Plaintiff were willful.
- g. Plaintiff is entitled to damages in the amount of overtime compensation not paid by Defendants at the rate of one and one-half times Plaintiff's regular rate of pay.
- h. Plaintiff is entitled to an equal amount as liquidated damages.
- i. Plaintiff is entitled to recover his costs and a reasonable attorney's fee incurred in prosecuting his claim.

115. It is in the public interest to have these declarations of rights recorded as Plaintiff's declaratory judgment action serves the useful purposes of clarifying and settling the legal relations at issue, preventing future harm, and promoting the remedial purposes of the FLSA.

116. The declaratory judgment action further terminates and affords relief from uncertainty, insecurity, and controversy giving rise to the proceeding.

WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor against Defendants:

- a. Declaring, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§
2201–02, that the acts and practices complained of herein are in
violation of the overtime and wage provisions of the FLSA;
- b. Awarding Plaintiff his reasonable attorney’s fees and the costs and
expenses of the litigation pursuant to the FLSA; and
- c. For such other and further relief as the Court deems just and proper

Dated: November 10, 2015

Respectfully submitted,

**PHILLIPS DAYES NATIONAL EMPLOYMENT LAW
FIRM PC**

By: /s/ Trey Dayes
Trey Dayes
Attorney for Plaintiff